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C O R R E C T E D C O P Y (CHANGED PARA 7 FROM (C) TO (SBU))

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SUBJECT: MILITARY JUSTICE WORKING GROUP HEARS REFORM
CHALLENGES

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SUMMARY

11. (SBU) Military Criminal Justice (MPJ) director Luz Marina Gil and National Director for Prosecutors of the Prosecutor General's office (Fiscalia) Alicia Ledesma outlined their plans for greater military-civilian cooperation on human rights investigations, including extrajudicial killings, to an Embassy-organized working group on military justice. Members of the international community voiced support for the reforms, and urged greater GOC action to address case backlogs and deter new killings. Representatives from the UK, Swedish, Spanish, and Dutch embassies agreed to support GOC efforts and to coordinate their assistance programs with other donors. End Summary

12. (SBU) On November 1, Polcouns hosted the second meeting of the "Group of Friends" of Colombian military justice reform. Participants included: Swedish Ambassador Lena Nordstrom and Poloff Monica Wulfing, British DCM James Darius, Dutch Embassy Poloff Hester Jonkman, Spanish Military Attache Colonel Jose Maria Arraco Montoya, UN High Commissioner for Human Rights office (UNHCHR) Deputy Director Javier Hernandez, International Committee of the Red Cross (ICRC) Official Yves Heller, Vice Minister of Defense Sergio Jaramillo, Ministry of Defense Human Rights Office director Lieutenant Colonel Juan Carlos Gomez, National Director of the Prosecutor General's office Alicia Ledesma, Military Criminal Justice director Luz Marina Gil, DOJ/JSRP Manager Paul Vaky, and Major Walter Mosher of MILGRP.

MOD AND FISCALIA EFFORTS ON MILITARY JUSTICE REFORM

13. (SBU) Gil and Ledesma presented their latest steps on MPJ reforms, highlighting increased cooperation between the civilian and military systems to improve the speed of new investigations and end jurisdictional disputes between military and civilian prosecutors. Gil noted that legislation amending the military criminal justice code to clarify civilian courts' jurisdiction over human rights and international human rights violations will likely be passed before the end of the year. The GOC has worked closely with UNHCHR on this issue and believes the bill addresses UNHCHR concerns. Gil said her office is also working to end the practice of military judges conducting parallel

investigations of alleged human rights violations. These investigations complicate civilian investigators' work and lead to lengthy delays. She noted that military judges transferred over 100 cases to the civilian courts over the last three months with no footdragging.

14. (SBU) Gil said the GOC is committed to further reform, but this will take time. Some retired and active duty generals resist change, fearing it will undercut the special military jurisdiction (fuero) and expose them to prosecution by civilians who do not understand military operations or are biased against the Armed Forces. Jaramillo said the MOD is testing the waters in congress to see if there is enough support for a constitutional amendment that would remove the MPJ from the Defense Ministry and make it a specialized branch of the civilian judiciary. She said the shift from the inquisitorial to an accusatorial system--scheduled to start in 2008--will require substantial resources as well as a change in culture.

15. (SBU) Ledesma and Gil said greater cooperation between military and civilian prosecutors is key to investigating extrajudicial killings (EJES). The Fiscalia has set up a sub-unit within the Human Rights unit to focus on EJES, and has sent two special commissions to identify cases and expedite investigations in Medellin (Antioquia) and Villavicencio (Meta). Fiscalia data shows both areas account for a substantial number of alleged EJES. Ledesma said

civilian prosecutors will need a keen understanding of military operational law, noting that killings that would be illegal if committed by the police could be legal under international humanitarian law and military rules. A key factor in making such determinations will be the military's rules of engagement (ROEs). If a death was consistent with the ROEs, the Fiscalia could consider it a legitimate combat casualty.

16. (SBU) Gomez agreed clear ROEs that reflect international humanitarian law are crucial. The MOD issued broad ROEs in March, and published them on the MOD website in July. Training troops in their application has been a MOD priority throughout the year. Ledesma said the Fiscalia would train a limited number of prosecutors and investigators (CTI or Technical Investigative Bureau) in ROEs and international humanitarian law to help them better analyze these cases. Gil added that a USG-funded course involving military and civilian prosecutors is set for November 26-29. Ledesma said the CTI would need substantial logistical support from the military if it is to investigate all alleged combat deaths. (Note: In 2006, the military reported 2200 enemy combat deaths.) Jaramillo and Gomez said the military--following orders issued by Minister Santos--is committed to facilitating transportation of CTI to the scene of all combat deaths and would also defer to its investigative authority.

QUESTIONS ON EJES

17. (SBU) Hernandez voiced support for the new reforms, but said military officers' suspicion of civilian oversight would make implementation difficult. Some officers continue to see civilian prosecutors as part of a juridical war (guerra juridica) against the military. Jaramillo replied that the new annex to Directive 10, the MOD's directive to prevent EJES, provides specific punishments for field commanders who do not implement the new orders. Officers who cover up abuses will be severely punished. Jaramillo stressed the MOD's focus is prevention. As the Armed Forces strengthen internal disciplinary controls and improve understanding of operational legal constraints, the number of EJES will fall. The establishment of a greater Fiscalia presence in rural areas will also help, because it will facilitate the legal detention of illegal armed group members. He stressed that Defense Minister Santos and Armed Forces Commander Padilla understand the gravity of the EJE issue and are determined to

address it.

INTERNATIONAL COMMUNITY ASSISTANCE

¶18. (SBU) MILGRP shared its legal engagement plan for FY-2008 and asked other donors to coordinate their activities to provide the GOC with focused and effective training. UK DCM Darius said the UK would continue to host workshops on lessons learned and best practices. He also stressed the need for more training to help commanders better understand human rights law and to preserve the evidentiary chain of custody. Spanish Military Attache Arraco thanked the group for inviting Spain to participate and offered to brief the GOC on the Spanish military justice system and best practices.

¶19. (SBU) Ambassador Nordstrom stressed that Sweden would coordinate all future activities with the group. Sweden had sent experts from the Swedish National Defense University to pass on lessons learned from the Swedish military justice system to the Colombians, and would continue to work to improve civilian judicial capacity. Dutch Political Officer Jonkman agreed to follow up with the group on what potential assistance the Dutch could provide.

¶10. (SBU) UNHCHR and the ICRC agreed to help lobby for reforms at the political level and to work with the Fiscalía and MPJ to implement the UNHCHR's recommendations from its 2006 Human Rights report. Hernandez said UNHCHR provides Colombian military judges and military personnel with training on international humanitarian and human rights law, as well as suggestions on rules of engagement. Jaramillo, Gil, Ledesma and the participating countries said the session was extremely valuable in communicating Colombian military advances on these issues--as well as coordinating donor activities--and agreed to meet regularly in the future.
Brownfield